

1 HONORABLE BARBARA JACOBS ROTHSTEIN  
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6 AUG 28 2001 MR

7 AT SEATTLE  
CLERK U.S. DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
BY DEPUTY

CC: TO JUDGE MR

CV 01-01297 #00000003

8 UNITED STATES DISTRICT COURT  
9 WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

10 GENESEE SERVICES CORP , a Washington  
Corporation,

11 Plaintiff,

12 v

13 BRUCE T. BERNSTEIN, an individual,

14 Defendant

15 Case No : C01-1297

16 DEFENDANT BRUCE T. BERNSTEIN'S  
ANSWER AND AFFIRMATIVE  
DEFENSES TO PLAINTIFF'S  
COMPLAINT FOR DECLARATORY  
JUDGMENT

17  
18 Defendant, Bruce T. Bernstein, a citizen of New York, through his attorneys, answers the  
Plaintiff's Complaint for Declaratory Judgment (hereinafter the "Complaint") by admitting, denying,  
and alleging as follows.

19 I. ANSWER TO COMPLAINT

20 1. In answer to the introductory paragraph of the Complaint, Defendant admits that he  
21 entered a written employment agreement with plaintiff but denies the statement that "no additional  
22 payment is due and owing to defendant, other than his base compensation through July 31, 2001 "

23 2. In answer to paragraph 1.1 of the Complaint, Defendant denies the allegations therein.

24 3. In answer to paragraph 1.2 of the Complaint, Defendant denies the allegations therein.

25 4. In answer to paragraph 2.1 of the Complaint, Defendant admits that Plaintiff is a  
Washington corporation whose office is located in Bellevue, Washington. As to the other allegations

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28 DEFENDANT BRUCE T. BERNSTEIN'S ANSWER AND  
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3 ORIGINAL

STOKES LAWRENCE, P.S.  
800 FIFTH AVENUE, SUITE 4000  
SEATTLE, WASHINGTON 98104-3179  
(206) 626-6000

1 in paragraph 2 1 of the Complaint, Defendant is without sufficient information to admit or deny the  
2 allegations and therefore denies the same

3 5 In answer to paragraph 2 2 of the Complaint, Defendant admits that he is a resident and  
4 citizen of the State of New York

5 6. In answer to paragraph 3.1 of the Complaint, Defendant admits that Plaintiff and  
6 Defendant entered into an employment agreement (the "Agreement") and respectfully refers to the  
7 language of the Agreement for the terms and provisions thereof.

8 7 In answer to paragraph 3.2 of the Complaint, Defendant admits that he was hired by  
9 Plaintiff for the position of managing director, to perform such duties as Plaintiff's president might  
10 reasonably assign him, subject to the supervision of the Board of Directors of Plaintiff.

11 8. In answer to paragraph 3.3 of the Complaint, Defendant respectfully refers to the  
12 Agreement for the terms and provisions thereof

13 9 In answer to paragraph 3.4 of the Complaint, Defendant respectfully refers to the  
14 Agreement for the terms and provisions thereof

15 10. In answer to paragraph 3 5 of the Complaint, Defendant admits that he was terminated  
16 by Plaintiff effective July 31, 2001 and that Advantage Fund II, Ltd. did not invest at least \$50 million  
17 in "Qualified Investments" between September 1, 2000 and July 31, 2001. Defendant denies any  
18 implication contained in paragraph 3 5 of the Complaint that Defendant is not entitled to the  
19 conditionally guaranteed payment referred to in the Agreement

20 11 In answer to paragraph 3.6 of the Complaint, Defendant admits that Plaintiff has  
21 informed Defendant that under the Agreement he is not entitled to the amounts guaranteed and that  
22 Defendant has insisted that he has a legally enforceable right to receive the guaranteed payment  
23 referred to in the Agreement As to the other allegations in paragraph 3.6 of the Complaint, Defendant  
24 denies the same

25 12 In answer to paragraph 3.7 of the Complaint, Defendant admits the allegations therein

26 13. In answer to paragraph 3.8 of the Complaint, Defendant respectfully refers to the  
27 Agreement for the terms and provisions thereof.

1       14. In answer to paragraph 3.9 of the Complaint, Defendant respectfully refers to the  
2 Agreement for the terms and provisions thereof.

3           15. In answer to paragraph 4.1 of the Complaint, Defendant realleges paragraphs 1 through  
4 14 as if fully set forth herein.

5 16. In answer to paragraph 42 of the Complaint, Defendant admits the allegations therein

6 17. In answer to paragraph 4.3 of the Complaint, Defendant denies the allegations therein

7 18 In answer to paragraph 44 of the Complaint, Defendant admits that Plaintiff seeks a

8 declaratory judgment. As to the remaining allegations in paragraph 4.4 of the Complaint, Defendant  
9 denies the same.

## **II. RESERVATION OF RIGHTS**

Defendant reserves his rights to plead further answer, affirmative defenses, counterclaims, cross claims, and/or third party claims as investigation and discovery may warrant.

### **III. AFFIRMATIVE DEFENSES**

14       1. As first affirmative defense, Defendant alleges that the Court lacks personal  
15 jurisdiction.

2 As second affirmative defense, Defendant alleges that venue is inappropriate.

17       3       As third affirmative defense, Defendant alleges that Plaintiff has failed to state a claim  
18 on which relief can be granted.

19       4       As fourth affirmative defense, Defendant alleges that another action which includes the  
20 parties and issues herein is currently pending in the United States District Court, Southern District of  
21 New York, Case No. 01CV 8041.

#### IV. PRAYER FOR RELIEF

WHEREFORE, Defendant prays that this Court award the following relief:

24       1. Dismissal of the Complaint with prejudice or, in the alternative, stay the action until the  
25 action pending in the United States District Court, Southern District of New York, Case No. 01CV  
26 8041 is determined.

DEFENDANT BRUCE T. BERNSTEIN'S ANSWER AND  
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2. An award of attorneys' fees and costs incurred by Defendant, pursuant to the terms of the Agreement; and

3. Such other relief as the Court deems just and equitable.

DATED this 28<sup>th</sup> day of August, 2001.

STOKES LAWRENCE, P.S.

By M. Maynes  
Mark E. Maynes (WSBA #22721)  
Attorneys for Defendant Bruce T Bernstein

**DEFENDANT BRUCE T. BERNSTEIN'S ANSWER AND  
AFFIRMATIVE DEFENSES TO PLAINTIFF'S COMPLAINT  
FOR DECLARATORY JUDGMENT - 4**

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UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

GENESEE SERVICES CORP., a Washington Corporation,

Case No : C01-1297

Plaintiff,

CERTIFICATE OF SERVICE

v.

BRUCE T BERNSTEIN, an individual,

Defendant

I do hereby certify that on this 28th day of August, 2001, I caused to be served a true and correct copy of *Defendant Bruce T. Bernstein's Answer And Affirmative Defenses To Plaintiff's Complaint For Declaratory Judgment* by method indicated below and addressed to the following:

By  United States Mail  Overnight Mail  Facsimile  Hand Delivered

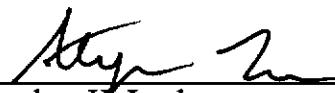
Michael Pierson

Riddell Williams P.S

1001 Fourth Avenue, Suite 4500

Seattle, WA 98154

Further, I do hereby certify that on this 28<sup>th</sup> day of August, 2001, I caused the original of said document to be filed in the United States District Court for the Western District of Washington.

  
Stephen H. Loch